

Attorney's Docket No. 023895/257070

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**RESPONSE UNDER 37 C.F.R. 1.116 - EXPEDITED
PROCEDURE - EXAMINING GROUP 3600**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re:	Poage et al.	Confirmation No.:	9114
Appl. No.:	09/385,414	Group Art Unit:	3623
Filed:	August 30, 1999	Examiner:	C. Colon
For:	APPARATUS AND METHOD FOR CREATING A MARKETING INITIATIVE		

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Commissioner for Patents
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Alexandria, VA 22313-1450

**RESPONSE AFTER FINAL ACTION
PURSUANT TO 37 C.F.R. § 1.116**

This correspondence is filed in response to the Final Office Action dated January 23, 2003. Applicants initially note with appreciation the thoroughness with which the Examiner has examined the application as evidenced by the Office Action.

Applicants have reviewed the rejections raised by the current Office Actions. Based on this review, Applicants respectfully submit that the claims as currently presented are patentable over the cited references. As such, Applicants respectfully request reconsideration of the claims based on the remarks provided below and that a Notice of Allowance as to all claims be issued.

In a previous Response, Applicants presented arguments that the claimed invention discloses determination of a likelihood that a new initiative will be effective using stored statistics reflecting "hit rates" based on characteristics of past initiatives with past request rates. Applicants submitted that the use of "hit rates" to evaluate the

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effectiveness of a new initiative was not taught or suggested by the cited combination of U.S. Patent No. 5,857,175 to Day et al. and U.S. Patent No. 6,230,143 to Simons et al.

The most recent Office Action rejected this argument. Specifically, the Office Action alleges that Applicants are attempting to use a specific definition for the term "hit rate." The Office Action states that the term "hit rate" as used in an on-line advertisement system does mean when a customer selects or clicks on the advertisement. However, the Office Action argues that the term "hit rate" as used with coupons means when a customer redeems a coupon offered for a discount purchase. The Office Action goes on to say that a "hit rate" of a marketing initiative is when the marketing initiative has been offered to a customer and the customer has accepted or redeemed the marketing initiative. The Office Action also alleges that this is a generally accepted definition of the term "hit rate" in the art and that Applicants are using a definition of the term "hit rate" that is different from that commonly used in the art for marketing initiatives.

Applicants are somewhat perplexed by the above argument presented in the Office Action. The Office Action has cited the definition for the term "hit rate" as used in the art and has provided no evidence whatsoever to support such a definition. Applicants are unaware of any such usage of the term "hit rate" to mean the offer and acceptance by a customer of a marketing initiative as is espoused by the Office Action. What is specifically telling here is that the very combination, (i.e., the Day '175 and Simons '143 patents), cited by the Office Action nowhere uses the term "hit rate." It would appear that if the term "hit rate" has the specific meaning in the art as espoused by the Office Action, that the term would have been used in the Simons '143 patent. It, however, was not used at all.

Instead, the Simons '143 patent uses a much different term for the act of offering and acceptance of a marketing initiative by a customer. This term is "redemption," not "hit" as the Office Action would suggest. The term "redemption" has long been used

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with coupons to mean acceptance of a coupon or use of a coupon by a customer. In fact, the AMERICAN HERITAGE COLLEGE DICTIONARY includes under the definition for "redeem" the following definition: "To turn in (coupons, for example) and receive something in return." (A copy of the definition is attached hereto under Attachment A.). This illustrates to Applicants that one skilled in the art would not equate the term "hit rate" with use of a coupon, as even a dictionary uses the word "redemption" for this action by a customer. To further bolster this position, Applicants have provided additional references that all disclose use of the term "redemption" with reference to coupons. (See Attachment A).

Applicants respectfully submit that the definition of "hit rate" as used in the art does not mean "offer and acceptance by a customer of a marketing initiative" as is espoused by the Office Action. Instead, the term "hit rate" as used in the art means the number of customers who view the marketing initiative. In this regard, Applicants submit herewith various references in the on-line marketing field that use the term "hit rate" to mean views to a marketing initiative, not offer and acceptance by a customer of a marketing initiative. (See Attachment B).

In light of this, Applicants respectfully submit that the definition used by the Office Action for "hit rate" is not "the accepted definition in the art," but instead, the definition presented by Applicants is the accepted definition of this term "hit rate" in the art. In fact, Applicants respectfully submit that as illustrated in the attached references at Attachment B, the term "hit rate" is so synonymous with "clicking or viewing a marketing initiative" that Applicants do not require any further clarification of the term in the claims, as the term has a specific meaning in the art. Applicants respectfully submit that the references at Attachment B are positive proof of the correct definition for the term "hit rate" as used in the art and not the non-corroborated definition espoused by the Office Action.

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It might be argued that the above remarks are directed to semantics only and do not address the issue of patentability over the cited references. Applicants, however, submit that the above illustrates the deficiencies in the combination cited by the Office Action. Specifically, the Simons '143 patent discloses assessment of the success of a coupon offering based on redemption rates for past coupons. This is something quite different from an evaluation of "hit rates" as is recited in the claims. Redemption rates and hit rates are different statistics and are not equivalent to each other.

For example, if 10 coupons were circulated and 5 were redeemed, the user would know that he/she had a redemption rate of 50%. This, however, does not tell the user how many of the coupons were actually "viewed." The reason the redemption rate was not higher may have been because only 7 customers "viewed" the coupon. If the other 3 customers had viewed the coupon, then the redemption rate may have been higher.

Hit rates provide a different piece of information to the user. It actually determines how many customers actually did view the marketing initiative. In other words, the redemption rate allows one to determine how good the marketing initiative was by how many customers accepted or redeemed the coupon, while "hit rate" as used in the claims lets one know how much exposure the marketing initiative may have to the public.

In this light, independent Claims 1, 10, 18, 21, and 24 all recite use of "hit rate" to evaluate a marketing initiative. As "hit rate" is something different from "redemption rate" and the cited combination nowhere teaches or suggests use of hit rate, Applicants respectfully submit that independent Claims 1, 10, 18, 21, and 24, as well as the claims that depend therefrom, are patentable over the cited references.

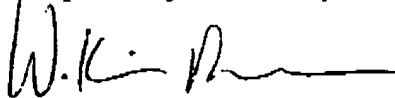
It is thus respectfully submitted that all of the present claims of the application are in condition for immediate allowance. Applicants therefore respectfully request that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicants'

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undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

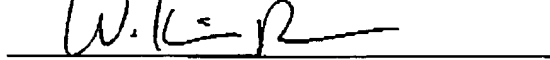


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